Montana Fish, Wildlife & Parks

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October 11, 2000

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Montana Fish, Wildlife & Parks: Director's Office, Legal Unit, and Enforcement
Evaleen Starkel, Montana Dept. of Livestock, Third Floor, Scott Hart Bldg., 301 Roberts, Helena, 59620
Mt Historical Society, State Historic Preservation Office, 225 North Roberts, Veteran's Memorial Bldg., Helena 59620
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Flathead County Commissioners, 800 S Main, Kalispell, 59901
Rep. Verdell Jackson, 555 Wagner Lane, Kalispell, 59901
Rep. Bob Lawson, Box 686, Whitefish, 59937-0686
Sen. Bob DePratu, PO Box 1217, Whitefish, 59937-1217
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Doug Brown, Jr., 100 Mont Pac Lane, Whitefish, 59937
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Ladies and Gentlemen:

Montana Fish, Wildlife & Parks has completed the Final Environmental Assessment and the proposed Decision Document for the Last Chance alternative livestock facility license. Copies are enclosed for your information.

Sincerely,

Dan Vincent
Regional Supervisor

DV/nli
Enclosure

FINAL ENVIRONMENTAL ASSESSMENT
LAST CHANCE ELK RANCH
ALTERNATIVE LIVESTOCK OPERATION

MONTANA ENVIRONMENTAL POLICY ACT (MEPA) PROCESS

Montana Fish, Wildlife & Parks (FWP) is required to perform an environmental analysis in accordance with the Montana Environmental Policy Act (MEPA) for "each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment" (Administrative Rules of Montana [ARM] 12.2.430). FWP prepares an environmental assessment (EA) to determine whether a project would have a significant effect on the environment.

The people of Montana, through our legislature, have determined that the alternative livestock industry is appropriate in Montana. It is understood that this carries with it some risk that cannot be reduced to zero. The level of risk that a particular project may introduce must be evaluated by FWP (through the MEPA process) using legislative intent, the negotiated rules and standards therein, as well as established practices that have been demonstrated to be sufficiently effective measures for similar conditions elsewhere.

If, using the above parameters, FWP determines that a project would have a significant impact that cannot be mitigated to a minor impact, the agency will prepare a more detailed environmental impact statement (EIS) before making a decision. If the agency determines that a proposed project will not have a significant impact, or that the impact can be mitigated to minor or none, the agency may make its licensing decision based upon results of the EA and criteria established under Montana alternative livestock statute, Montana Code Annotated (MCA) Title 87, Chapter 4, Part 4.

Mitigation measures may be considered in FWP's analysis as a means to reduce impact(s) of an alternative livestock ranch to a level below significance. FWP may also recommend mitigation measures to reduce impacts that are considered minor. FWP prepared a Draft EA for the proposed Last Chance Elk Ranch alternative livestock operation, which identified no significant impacts from the Proposed Action that could not be mitigated. The Draft EA was released for public review and comment September 7, 2000. Public comments were accepted through September 28, 2000.

The Draft EA also provided an analysis of impacts to private property by proposed stipulations in the EA as required under 75-1-201, MCA, and the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The analysis provided in the Draft EA was conducted in accordance with implementation guidance issued by the Montana Legislative Services Division (EQC 1996).

The Draft EA, as modified herein, and this Final EA are hereby approved as the Final EA. This Final EA for the Last Chance Elk Ranch alternative livestock operation contains summaries of the Proposed Action, affected environment, and potential consequences of the Proposed Action, all of which are described in additional detail in the Draft EA, which is adopted in this Final EA. This document also describes mitigation measures and requirements, includes a summary of substantive public comments and agency responses to those comments, and provides the conclusion of the EA. The preferred alternative is the Proposed Action with one requirement and several recommended mitigation measures.

PROPOSED ACTION

On May 19, 2000, FWP received an application dated May 8, 2000, from Mark and Sherilyn Morris to construct an alternative livestock facility for elk in Flathead County, Montana. FWP accepted the application as complete in a letter to Mr. and Mrs. Morris dated June 13, 2000. The proposed Last Chance Elk Ranch alternative livestock facility would be located approximately 5 miles south of the town

of Whitefish, and approximately 10 miles north of Kalispell, Montana. The applicants live adjacent to the proposed enclosure.

The proposed alternative livestock facility would consist of approximately 180 acres to be completed in three phases by an estimated date of July 2002. Phase 1 would encompass 5 acres and include 10 elk. Phase 2 would add 25 acres and contain an additional 50 elk, and Phase 3 would add approximately 150 additional acres and 300 elk. At full capacity for all three phases combined, a total of 360 elk would be in an enclosure covering approximately 180 acres. The proposed facility is located in the northwest corner of Section 24 and the southeast corner of Section 13, Township 30 North (T30N), Range 22 West (R22W) (Figures 1 and 2).

Purposes of the proposed elk ranch include breeding stock, meat production, and antler production. According to the applicants, no public shooting of alternative livestock would be allowed in the enclosure. Elk to be initially released into the enclosure would be purchased from a licensed alternative livestock facility. Wild animals would be removed from the enclosure prior to licensing.

Fence construction would be completed in accordance with requirements of FWP under ARM 12.6.1531. Elk ranch fencing would consist of 8-foot high, high-tensile, Tightlock steel wire fencing. The fence bottoms would be installed to provide not more than 3 inches of ground clearance. One exterior gate and two interior gates would be constructed for the enclosure; however, another gate, not yet located, would be included for the Phase 3 enclosure (to be approved by FWP). Gates would be constructed of 8-ft tall X 16-ft wide steel wire mesh with lock and latch.

A handling and quarantine facility would be constructed in the southwestern corner of the Phase 1 enclosure for purposes of handling and testing the alternative livestock. Construction of this facility would meet requirements of the Montana Department of Livestock (DoL) under ARM 32.4.801.

ALTERNATIVES

One alternative (No Action Alternative) is evaluated in this EA. Under the No Action Alternative, FWP would not issue a license for the Last Chance Elk Ranch alternative livestock operation as proposed. Therefore, no alternative livestock would be placed in the proposed enclosure. Implementation of the No Action Alternative would not preclude other activities allowed under local, state, and federal laws to take place at the proposed alternative livestock site.

AFFECTED ENVIRONMENT

The proposed Last Chance Elk Ranch alternative livestock facility is located on leased land about 5 miles south of Whitefish and 10 miles north of Kalispell, Montana. The facility would be located on approximately 180 acres of forested land and woodland pasture, approximately 2 miles west of the Whitefish River and 2½ miles east of the Stillwater River. The site consists of gentle (0 to 20%) slopes surrounding a small drainage that occasionally flows north to a marsh located off the property. The elevation of the site ranges from 3140 to 3180 feet above mean sea level. Current land use of the area in the vicinity of the site is silviculture, agriculture, and residential. The Stillwater State Forest is located about 2 miles south of the proposed facility.

According to the soil survey of the Upper Flathead Valley, soil on about 70 percent of the site consists of the Whitefish cobbly silt loam. The Whitefish series consists of deep, well-drained, light-colored, silty soils containing some gravel and large stones on the surface that are underlain by gray, calcareous till. These soils have developed from calcareous, medium-textured, glacial till containing a large percentage of round gravel, cobbles, and large stones.

The proposed Last Chance alternative livestock operation would be located in the Whitefish River drainage, approximately 2 miles west of the river (Figures 1 and 2) and 2½ miles east of the Stillwater River. The site contains an ephemeral drainage that occasionally flows northward to a large marsh located about ½-mile north of the property. Overland flow occurs across portions of the site during periods of snow-melt and heavy precipitation events. The proposed enclosure includes several seasonal ponds. Average annual precipitation at Whitefish and Kalispell is about 22.6 inches and 15.3 inches, respectively; average annual total snowfall is about 74 inches at Whitefish and 59 inches at Kalispell.

The primary aquifer in the project area is bedrock of Precambrian-age Belt Series Formation. Surficial glacial deposits, however, contain small quantities of shallow groundwater. Water for the proposed alternative livestock would be obtained from a well at the site. Numerous domestic wells are present to the north and east of the proposed enclosure in areas of residential development. Few wells are located south and west of the project site. Most wells are completed to depths greater than 100 feet and, in several cases, exceed a depth of 300 feet. Direction of groundwater flow in the vicinity of the proposed alternative livestock facility probably is variable in the unconsolidated sediments, but is southeasterly in bedrock. Depth to groundwater in bedrock is generally greater than 100 feet, with limited quantities of shallow water in unconsolidated alluvial and glacial sediments. During the spring and early summer period, soil in the low-lying areas becomes saturated to the surface (i.e., marshy areas).

The proposed alternative livestock site is comprised of mixed conifer (45%), sub-irrigated meadow (50%), and riparian habitat (5%). This site has historically been logged and grazed by livestock. Estimated total forage production of the site would be about 250 tons per year. Federally-listed threatened or endangered plant species were not observed within the proposed alternative livestock site.

The proposed alternative livestock site and surrounding land is year-round white-tailed deer habitat. There is no density estimate for deer in this area during summer. During winter, migratory deer move into the area from the Stillwater State Forest to the south and west. Elk and moose general and winter range has been delineated by FWP approximately ½ to 1 mile west and north of the proposed facility, though these species likely frequent the area on a sporadic basis during all or most of the year. The area is also frequented by black bears and possibly mountain lions.

Most land immediately surrounding the proposed alternative livestock site is forested, agricultural, and rural residential land. The general area has historically been used by the local farmers and ranchers. Several blocks of Stillwater State Forest land are located within 1 to 2 miles of the proposed enclosure. The Kuhns Wildlife Management Area is located about 2½ miles west-southwest of the proposed enclosure. This sparsely populated area apparently is not zoned for any specific use, although agriculture is the prevailing land use. Several county roads are located within 2 miles of the proposed alternative livestock site, and U.S. Highway 93 is about ¼-mile to the east. The nearest permanent residences are located approximately ¼ -mile from the proposed alternative livestock facility, most of which are east and north of the site near U.S. Highway 93. A recently approved subdivision is under construction approximately ¼-mile west of the property.

No livestock are currently pastured in the proposed enclosure; however, there is a potential for livestock to graze in pastures adjacent to the perimeter fence when constructed. There are resident populations of deer in the vicinity of the proposed enclosure that could potentially be subject to disease transmission from the domestic elk. In order for disease transmission to occur, the organism causing the disease needs to be present. Any alternative livestock introduced to this proposed facility would be tested for brucellosis and tuberculosis and would be in compliance with DoL regulations (monitoring for chronic wasting disease, etc.) prior to movement to the facility.

CONSEQUENCES OF THE PROPOSED ACTION

Only primary resources with the potential to be adversely impacted by the Proposed Action are

summarized in this section. A more detailed review of environmental consequences is contained in *Part II* of the Draft EA.

Impacts to Land, Water, and Vegetation Resources

The proposed alternative livestock operation on approximately 180 acres would have minor impacts to land and soil resources at full capacity of 360 elk. Soil on the low-gradient slopes has a moderate hazard of wind and water erosion. Poorly drained soils in the central portion of the site and near the southwest corner present a risk of compaction and disruption if heavy use by elk occurs, especially in areas of muck and peat, which have low soil strength. Soil compaction, coupled with high densities of animals, can result in the reduction of plant cover and an increase in local runoff from affected areas.

Increased runoff and erosion would occur in some areas of the alternative livestock site if the stocking rate exceeds the carrying capacity of the pasture and vegetative cover is diminished. The proposal to pasture up to 360 alternative livestock on approximately 180 acres (i.e., 2 elk per acre) would be expected to reduce vegetative cover. Areas of the proposed enclosure that would be most susceptible to erosion problems are on the wet marshy areas. The extent to which erosion would occur is dependent primarily on animal density and period of occupancy in a given area. Any sediment that leaves the proposed enclosure area would exit along the ephemeral drainage to the north and enter a large marshy area approximately ½-mile from the site (Figure 2).

Domestic elk fecal matter and nutrient-enriched water would have a minor effect on the quality of water in the vicinity of the alternative livestock ranch (dependent upon animal density and waste management practices), primarily during periods of snow-melt and major precipitation events. Nutrients in runoff from the site would enter the marsh area to the north of the proposed enclosure. Due to the considerable depth to water in the primary aquifer (i.e., bedrock), adverse impacts to groundwater quality are expected to be minor or none.

The Proposed Action would place up to 360 elk on approximately 180 acres for a year-long basis. The proposed alternative livestock site would supply only about one-third of forage needs of the alternative livestock when fully stocked. The maximum stocking rate of 2 adult elk per acre is considered high and would contribute to the long-term decline of vegetation resources, both in terms of plant species composition and overall productivity of the site. Supplemental feed would be required to sustain the alternative livestock during the nongrowing season, and some feed would need to be provided during the growing season to help reduce animal use on the existing vegetation.

There are no plans to alter existing plant communities on the proposed alternative livestock ranch, other than to thin some forested portions. There are no known threatened or endangered plant species in this area. Development of the proposed facility would not result in a change of agricultural use on the 150 acres of forested rangeland.

Noxious weeds (St. John's wort) are prevalent at this site and, under an intensive grazing regime, would be expected to increase in abundance. Weeds would spread quickly to disturbed areas around any site that alternative livestock are fed or handled.

Weed seeds could also be imported into the area with animal feed. Loss of vegetative cover due to the maximum stocking rate would also provide opportunity for weeds to become established throughout the proposed alternative livestock site.

Impacts to Wildlife Resources

The exclusion of wildlife from the proposed enclosure would displace a few resident deer from year-round habitat in the area. The proposed fence enclosure would cross low-gradient slopes, with steepest

slopes of about 20 percent in some areas. Deer moving through the area would have to walk around the perimeter fence. There are no known fisheries in the vicinity of the proposed enclosure (nearest is Whitefish River 2 miles to the east). Mountain lions and black bears could potentially pass through this area and may be attracted to the alternative livestock to a minor degree.

Another concern regards the escape of captive elk and the potential for interbreeding of wild elk with domestic elk whose genetic make-up has been altered through several generations of selective breeding or through interbreeding with domestic red-deer. Although red-deer are now prohibited species in Montana, historically some alternative livestock operators did bring red-deer or red-deer hybrids into their facilities. The concern regarding red-deer hybrids is partially mitigated through current regulations. Although the impact of genetic pollution on wild elk herds is unknown, the effect is undesirable in terms of maintaining the genetic integrity of existing populations.

Fence integrity must be maintained such that the game-proof condition of the enclosure is maintained. Excessive snow accumulation and tree wind-throw have the potential to affect fence integrity at the proposed enclosure site.

Impacts to Land Use, Recreation, and Safety

The proposed alternative livestock facility would be compatible with existing agricultural land uses in the area. The elk ranch would not result in a change in historical agricultural use on the approximately 180 acres of forested rangeland. With respect to land use, no significant conflicts should result between operation of the alternative livestock facility and the agricultural or residential areas. Additional homes could be constructed in the vicinity of the enclosure on private land. Potential effects of the alternative livestock operation on adjacent property values is difficult to evaluate because some nearby property owners may like the idea of alternative livestock, whereas others would find it undesirable. No impacts to the local infrastructure would occur under the Proposed Action.

Some local residents may feel the alternative livestock operation would decrease their quality of life. Neighbors harboring negative feelings about the operation would perceive a loss in their sense of social well-being. However, some neighbors and local residents may like the idea of an alternative livestock facility and enjoy viewing the elk, deer, or other alternative livestock. These people may feel the facility would add to their quality of life and sense of well-being.

Risk/Health Hazards

There is little potential for transmission of water-borne disease pathogens, if present, to be transported from the proposed facility due to the lack of perennial flow through the property. The route of chronic wasting disease (CWD) transmission at this time is unknown; therefore, the potential for transmission by soil, water, or other media cannot be determined nor impacts disclosed.

The risk of disease (e.g., brucellosis and tuberculosis) being passed from alternative livestock to wildlife and traditional livestock (if present) would be minimal if fence integrity is maintained and the requirement(s) and/or mitigation measures described in this EA are followed. Potential for disease transmission from alternative livestock is also mitigated through DoL disease testing requirements. Each facility is required to have access to an isolation pen (quarantine facility) on the property or an approved quarantine plan to isolate any animals that are imported or become ill. Snow drift-prone areas and trees along portions of the perimeter fence of the proposed enclosure have the potential to affect fence integrity.

There is some risk of infection to hunters who field dress deer or elk infected with tuberculosis or brucellosis. Routine brucellosis and tuberculosis testing requirements for alternative livestock offer a measure of surveillance that minimizes that risk. Another potential risk to human health would be the attraction of predators to the proposed enclosure and the proximity of residences to the site.

Cumulative Effects

The general area is used for farming, ranching, and rural housing. The Proposed Action would result in numerous impacts that historically and presently occur in the area from domestic livestock grazing. Due to the sparse population in the vicinity of the proposed alternative livestock facility, no significant cumulative impacts to local residents, wildlife, or habitat are expected. Most residents live north and west of the Last Chance site near U.S. Highway 93. The Spoklie Tobie Creek alternative livestock facility is located about 5 miles west, and the Tutvedt BCD alternative livestock facility is located about 7 miles south of the Last Chance site. The proposed alternative livestock operation would result in potential impacts that are individually minor, but not cumulatively significant.

REQUIRED STIPULATION

One requirement would be imposed for the proposed Last Chance alternative livestock facility regarding monitoring of the perimeter fence to ensure it is maintained in game-proof condition:

1. Licensee shall inspect the perimeter fence on a regular basis (e.g., weekly) and immediately after or during events that have a greater probability of damaging the fence (e.g., wind storms and significant precipitation events) to insure fence integrity with respect to falling trees, surface water runoff, burrowing animals, predators, and other game animals. Fence inspection shall follow a written fence monitoring plan that is submitted to and approved by FWP prior to issuance of the license. If major repairs are required of the perimeter fence due to falling tree(s) or heavy runoff, no alternative livestock shall be placed back into the affected pasture(s) until the fence is inspected for game-proof condition by an FWP representative. Should ingress or egress become a problem during winter due to areas of snow accumulation, areas prone to snow drifting shall be identified and the fence height raised sufficiently to prevent ingress/egress. Additional remedial actions may be required by FWP if ingress or egress occurs at the facility.

The requirement listed above is imposed to mitigate a potential risk to fence integrity and the resulting potential for ingress/egress of alternative livestock and wildlife. The game-proof condition of the fence could be compromised by tree wind-throw and areas of substantial snow accumulation. Regular fence monitoring and a written fence monitoring plan is required so that FWP has a level of confidence that potential fence integrity problems can be detected promptly before egress problems occur.

RECOMMENDED MITIGATION MEASURES

The following recommended mitigation measures address minor impacts identified in this EA for the proposed Last Chance Elk Ranch alternative livestock facility for resources that have the potential to be affected by the Proposed Action:

- Maintain a reasonable stocking rate within the enclosure to minimize the potential for erosion and mitigate potential impacts from runoff and fecal matter. Potential water quality impacts also could be minimized by disposing of dead animals and excess fecal material at a site that is isolated from surface water and groundwater (disposal must meet county regulations for solid waste if applicable). On-site disposal of dead alternative livestock would be regulated by DoL under ARM 32.4.1002.

- For any areas that may have erosion and sedimentation problems, utilize best management practices (BMPs) where surface water could enter the ephemeral drainage channel. The BMPs may include earth berms, straw bale dikes, vegetative buffer zones, and/or silt fences to be used on a seasonal basis.

- Monitor the alternative livestock site for invasion of noxious weeds and treat affected areas in a timely manner. Should noxious weeds continue to be detected, a weed control program should be implemented, if not already in place, to control the weeds.

- Provide certified weed-free supplemental feed and minerals to the alternative livestock on a seasonal basis to reduce excessive grazing on preferred pasture plants.

- Create/utilize interior pastures such that rotational grazing strategies can be implemented to reduce adverse impacts to vegetation, minimize changes in soil structure, and potential increases in runoff and erosion to surface water drainages from disturbed ground. In particular, allow only seasonal use of saturated soil in wetland areas.

- Store feed away from exterior fences or enclose in bear-resistant containers or buildings. Feed alternative livestock at interior portions of the enclosure and not along the perimeter fence.

- Remove dead animals, excess fecal material, and waste feed from the alternative livestock facility and deposit at a site not likely to be used by humans or domestic and wild animals. Dead animals also can be buried on-site in adherence with DoL regulations.

- Minimize risk of disease epidemic or heavy parasite infections among alternative livestock by maintaining a reasonable stocking rate in relation to the enclosure size, periodic removal of manure from concentration areas, and development of a disease immunization and parasite treatment protocol as applicable to alternative livestock.

- If archeological artifacts are observed during construction of the enclosure fence or from other activities, work should stop in the area and the discovery reported to the Montana Historical Society in Helena. If work stoppage in the area containing observed artifacts is not possible, record the location and position of each object, take photographs, and preserve the artifact(s).

SUMMARY OF PUBLIC COMMENTS AND FWP RESPONSES

Public comments for the Last Chance Elk Ranch alternative livestock operation draft environmental assessment (EA) were accepted from September 7, 2000 until 5 pm September 28, 2000. FWP received two written public comments during the comment period. Substantive issues and questions raised during the comment period are summarized below, along with FWP and DoL responses. Public comments are considered substantive if they relate to inadequacies or inaccuracies in the analysis or methodologies used in the Draft EA, or identify new impacts or recommend reasonable new alternatives or mitigation measures, or involve disagreements or interpretations of impact significance. Comments, which express personal preferences or opinions on the proposal rather than on the evaluation itself, are not specifically addressed.

RESPONSES TO COMMENTS

Comment Issue #1: Ethically opposed to alternative livestock operations.

Response #1: Comment noted.

Comment Issue #2: Against the use of natural resources for private benefit.

Response #2: Comment noted.

Comment Issue #3: Use of Montana elk antlers for export to the Asian Medicinal Market is inappropriate.

Response #3: Comment noted

Comment Issue #4: Escape of hybridized animals will harm native wildlife

Response #4: Ingress and egress issues are discussed in Section 5 (Fish and Wildlife) of the draft EA. Additional measures to prevent ingress/egress are disclosed in the Stipulations and Mitigation Measures Section.

Comment Issue #5: Concerned about air, water, and noise pollution, especially run-off resulting from antler and meat production.

Response #5: Environmental effects are discussed in Part II, Section 2 (Air Resources) and Section 3 (Water Resources). Several mitigation measures recommend that a reasonable stocking rate is maintained to mitigate potential minor impacts of runoff and fecal matter. In addition, for any areas that may have erosion and sedimentation problems, mitigation measures recommend best management practices where surface water could enter the ephemeral drainage channel.

Comment Issue #6: Is the area zoned for this type of business?

Response #6: Effects on Land Use are discussed in Section 7 (Land Use). The proposed operation would be compatible with existing agricultural land uses.

Comment Issue #7: What is antler production? What are the potential effects of noise and mechanization?

Response #7: Antlers are removed annually with a hand-saw. There is no mechanical noise associated with antler production.

CONCLUSION OF THE EA

The Draft EA, as modified herein, and this Final EA are approved as the Final EA for the Last Chance Elk Ranch alternative livestock operation. The preferred alternative is the Proposed Action, modified with the requirements listed in this Final EA. Based on this review, it is determined that the Proposed Action with the requirements and agreed upon mitigation measures would not have a significant impact on the environment and that an EIS will not be required.

ANALYSIS OF IMPACT ON PRIVATE PROPERTY

Montana alternative livestock statutes (87-4-476, MCA) require that licenses may be denied or issued with stipulations to prevent unacceptable threat of escape of alternative livestock, and to prevent a significant threat to the safety of the general public and surrounding landowners by the shooting of alternative livestock animals. MEPA requires FWP to identify and analyze environmental impacts of the Proposed Action and potential mitigation measures. MEPA, as revised by Senate Bill 231 of 1995, also requires agencies to evaluate the impact on private property of regulatory actions, such as denial of a permit or establishment of permit conditions (75-1-201, MCA). The Environmental Quality Council (EQC) has established procedural guidelines to implement these requirements. The analysis provided in the Draft EA was prepared in accordance with implementation guidance issued by the EQC.

In addition, the Private Property Assessment Act (2-10-101, MCA, et seq.) requires agencies to determine whether proposed actions by the state of Montana have "taking or damaging implications", such as to constitute a deprivation of private property in violation of the United States or Montana constitutions and, if so, to perform an impact assessment to determine the likelihood that a state or federal court would hold that the action is a taking or damaging, to review alternatives, and to determine the estimated cost of compensation. In accordance with the Act, the attorney general has prepared guidelines, including a checklist, to assist agencies in identifying and evaluating actions with taking or damaging implications.

The Draft EA contains FWP's completed checklist with respect to the stipulations recommended in the preferred alternative and has found that the preferred alternative does not have taking or damaging implications and that an impact assessment is not required.

PERSONS RESPONSIBLE FOR PREPARING THE EA AND RESPONSES TO PUBLIC COMMENTS

Montana Fish, Wildlife & Parks

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MORRIS LAST CHANCE ELK RANCH
ALTERNATIVE LIVESTOCK OPERATION
DECISION DOCUMENT

OCTOBER 10, 2000

Alternative Livestock Application and MEPA Review.

On May 19, 2000, Montana Fish, Wildlife and Parks (FWP) received an application dated May 8, 2000, from Mark and Sherilyn Morris to construct an alternative livestock facility in Flathead County, Montana. FWP accepted the application as complete in a letter to Mr. and Mrs. Morris dated June 13, 2000. The proposed Last Chance Elk Ranch alternative livestock facility would be located approximately 5 miles south of the town of Whitefish, Montana. The property is located midway between the Whitefish and Stillwater rivers, about 2 miles from each. The applicants live adjacent to the proposed facility.

The purposes of the facility would be for breeding stock, meat production, and antler production. The proposal does not include fee shooting of alternative livestock at the facility. The proposed 180-acre alternative livestock facility would be constructed in 3 phases, with an estimated completion date of July 2002. Phase 1 would encompass 5 acres and contain up to 10 elk. Phase 2 would add 25 acres and add an additional 50 elk. Phase 3 would add an additional 150 acres and 300 elk. At full capacity for all 3 phases combined, a total of 360 elk would be in an enclosure covering approximately 180 acres. The proposed facility is located in portions of Sections 13 and 24, Township 30 North (T30N), Range 22 West (R22W).

Fence construction would be completed in accordance with requirements of FWP under ARM 12.6.1531. Fencing would consist of 8-foot high, high tensile, Tightlock steel fencing on steel posts. The fence bottoms would be installed to provide not more than 3 inches of ground clearance. One exterior gate and 2 interior gates would be constructed for the proposed facility. Another gate, not yet located, would be necessary for the Phase 3 enclosure (to be approved by FWP). Gates would be constructed of 8-ft tall X 16 feet wide steel wire mesh with lock and latch.

A handling and quarantine facility would be constructed in the southwest corner of the Phase 1 enclosure. Construction of this facility would meet requirements of the Montana Department of Livestock (DoL) under ARM 32.4.801.

FWP and the Montana Department of Livestock (DoL) prepared a draft Environmental Assessment (EA) pursuant to the Montana Environmental Policy Act (MEPA) and Alternative Livestock statutes. This document was distributed for public review and comment on September 7, 2000, with comments accepted through September 28, 2000. No public hearings regarding this proposed expansion were conducted.

FWP received 2 written public and agency comments during the comment period. Issues raised included risk of disease; effects on water, ethics, and hunting traditions; potential for hybridization; and fencing issues. These comments were collected and reviewed by Maxim Technologies, Inc., Helena, MT, with responses to specific issues prepared by Maxim, FWP, and DoL. A summary of the specific issues raised and resulting responses are included in the Final EA.

Upon completion of the EA, it was determined that a full Environmental Impact Statement (EIS) would not be required. No significant impacts from the proposed action were identified that could not be mitigated. A copy of the Final EA is attached.

Proposed Decision:

Based upon our review of the EA, the license application file, and the information noted below, FWP has determined that a license to operate the alternative livestock facility in question will be issued. The issuance of this license is contingent upon approval of all fence construction and the Licensees' adherence to the stipulations listed below. The Licensees will have 3 years from the date of this approval to complete all fence construction as submitted in this application. Changes from the application must be approved by FWP prior to implementation of modifications.

The Licensees must be in compliance with all Alternative Livestock statutes, rules, and regulations of Montana Fish, Wildlife and Parks and Department of Livestock. Current regulations are attached for the applicants' information, but it is the Licensees' responsibility to keep up with any changes in the laws or regulations. The Licensees must also comply with the stipulation listed below.

With most alternative livestock facilities, there is a concern of disease transmission to wild populations and also genetic 'pollution', should wild and captive animals interbreed. Wild animals, such as native elk, black bears, mountain lions, and coyotes, can be attracted to elk facilities due to the availability of food and potential breeding opportunities. Responsible management and adherence to FWP stipulations and regulations will reduce the risk of contact between wild game and captive elk to an acceptable level. The EA recommends additional measures, which should assist in that effort.

The proposed expansion will exclude wildlife from using approximately 180 acres of forested and agricultural land if all 3 phases are constructed. Given the total size of the proposed enclosure (approximately 180 acres), the impact from the loss of habitat was not considered significant.

Any potential impacts on water quality not addressed herein can be mitigated by the applicants' compliance with the state's water quality standards and requirements. Point

source discharges, which include operations qualifying as concentrated animal feeding operations, are regulated under Title 75, Chapter 5, Part 6, MCA and ARM 16.20.1301, et. seq., and may require permits, especially if animal numbers result in significant loss of vegetation. Nonpoint source discharges are regulated under the prohibitions against the pollution and nondegradation of state waters (Title 75, Chapter 5, Parts 3 and 6, MCA and ARM 16.20.701 et. seq.). Nonpoint sources of pollution are considered non-significant sources of degradation where reasonable land, soil, and water conservation practices are applied and existing, and anticipated beneficial uses will be fully protected (ARM 16.20.713). The Department of Environmental Quality has the authority to determine whether an activity satisfies these standards (ARM 16.20.709).

The accumulation of packed snow and other factors increase the risk of ingress and egress associated with most alternative livestock facilities. FWP requires the immediate notification of the ingress or egress of any wild or captive ungulate in order to assess the adequacy of fencing requirements. This should help to address problems early and may result in additional modifications to fence design.

The Department has the duty under the Montana Environmental Policy Act to conduct an additional environmental review if the action approved by the agency changes, subsequent to the agency's original approval, in a manner which has impacts substantially different from those which were reviewed in the original MEPA review (Ravalli County Fish and Game Association v. Montana Department of State Lands, 273 Mont. 371, 903 P.2d 1362 (1995)). For that reason, the Department provides notice that the MEPA review performed for this license application reviewed the impacts of an alternative livestock expansion with a total of up to 360 elk on approximately 180 acres. To the extent that the applicant hereafter increases the number of species of animals or makes other significant changes to the operation, a supplemental MEPA review must be conducted.

License Stipulation:

The following requirement, which has been agreed to by the applicants, is imposed by FWP for Morris Last Chance Elk Ranch and is designed to ensure that the fence enclosure is maintained in game-proof condition:

(1) Licensee shall inspect the perimeter fence on a regular basis (e.g. weekly) and immediately after or during events that have a greater probability of damaging the fence (e.g., windstorms and significant precipitation events) to insure fence integrity with respect to falling trees, surface water runoff, burrowing animals, predators, and other game animals. Fence inspection shall follow a written fence monitoring plan that is submitted to and approved by FWP prior to issuance of the license. If major repairs are required of the exterior fence due to falling trees or heavy runoff, no alternative livestock shall be placed back into the affected

pasture(s) until the fence is inspected for game-proof condition by an FWP representative. Should ingress or egress become a problem during winter due to excessive snow accumulation or differential slope heights along the perimeter fence, fence height shall be increased a minimum of 10 feet in the identified problem area. Additional remedial actions may be required by FWP if ingress or egress occurs at the facility.

The stipulation listed above is imposed to mitigate a potentially significant risk from ingress/egress of alternative livestock and wildlife due to fence height concerns from potential snow accumulation and by tree wind-throw. Regular fence monitoring and a written fence monitoring plan is required so that FWP has a level of confidence that potential fence integrity problems can be detected promptly before egress problems occur.

Recommended Mitigation Measures:

The following list of recommended mitigation measures have been agreed to by the applicants and will be incorporated into the license requirements. They address minor impacts identified in the Morris Last Chance Elk Ranch alternative livestock EA; for a complete list of all mitigation measures, see the check-list portion of the Draft EA:

- Maintain a reasonable stocking rate in the proposed facility to mitigate potential impacts from erosion and fecal matter. Employ one or more of the following best management practices (BMPs) to reduce odor problems if they occur: quickly incorporate accumulated waste into the soil by plowing or discing as appropriate; spread waste during cool weather or in the morning during warm, dry weather; properly dispose of animal carcasses according to county solid waste regulations; carcasses and fecal material should not be disposed of in, or adjacent to, water bodies, roads and ditches; and reduce stocking rate of alternative livestock.

- Install several strands of electrified wire around the exterior fence perimeter to discourage predators and unwanted domestic dogs from gaining access to the facility. Should predators or unwanted dogs gain access to the facility and spook the elk, excessive pressure on the exterior fence may result and increase the potential for egress.

- Store feed away from exterior fences or enclose in containers or buildings, and feed alternative livestock at interior portions of the enclosure and not along the perimeter fence.

- Remove dead animals or bury onsite according to DoL regulations. Removed carcasses should be deposited at a site not likely to be used by humans, wildlife, or

domestic animals. Onsite disposal of dead alternative livestock is regulated by DoL under ARM 32.4.1002.

- For areas that may have erosion and sedimentation problems, utilize BMPs where surface water could enter the Stillwater River. The BMPs may include earth berms, straw bale dikes, vegetative buffer zones, and/or silt fences to be used on a seasonal basis. The booklet "Common Sense and Water Quality, a Handbook for Livestock Producers" (Montana Department of Health and Environmental Sciences, 1994) is recommended for further mitigation measures.

- Monitor the alternative livestock site for invasion of noxious weeds, and treat affected areas in a timely manner. Should noxious weeds continue to be detected, a weed control program should be implemented, if not already in place, to control the weeds.

- Provide certified weed-free supplemental feed and minerals to the alternative livestock on a seasonal basis to reduce excessive grazing on preferred pasture plants.

- Create/utilize interior pastures such that rotational grazing strategies can be implemented to reduce adverse impacts on vegetation, and minimize changes in soil structure and potential increases in runoff and erosion to surface water drainages from disturbed ground. In particular, allow only seasonal use in areas of saturated soil in wetland areas.

- Minimize risk of disease epidemic or heavy parasite infections among alternative livestock by maintaining a reasonable stocking rate in relation to enclosure size, periodic removal of manure from concentration areas, and development of a disease immunization and parasite treatment protocol as applicable to alternative livestock.

- If archaeological artifacts are observed during construction of the enclosure fence or other activities, stop work in the area and report the discovery to the Montana Historical Society; Historic Preservation Office, (406) 444-7715. If work stoppage in the area containing observed artifacts is not possible, record the location and position of each object, take pictures, and preserve the artifact(s).

Daniel P. Vincent
Regional Supervisor

10/11/00
Date

Mark Morris
License Applicant

Date

Sherilyn Morris
License Applicant

Date

Please sign the document and return the original to FWP to indicate your concurrence with the license stipulation and recommended mitigation measures listed above. A copy of the signed decision will be provided to you for your records.

Mail to: Nancy Ivy, MFWP Region One, 490 North Meridian Rd., Kalispell, MT 59901